

APPEAL NO. 040384  
FILED APRIL 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 6, 2004, with the record closing on January 20, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that he did not have disability. The claimant's appeal states that he does not agree with the hearing officer's decision. The respondent (carrier) asserts that the claimant's appeal is untimely and should not be considered, and that, should the Appeals Panel find the appeal is timely, sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

The carrier contends in its response that the claimant failed to timely file an appeal because the appeal was filed in Spanish without an English translation being provided. The claimant's appeal, although written in Spanish, was timely filed on February 19, 2004, and the carrier's response was timely filed. The Appeals Panel has previously upheld the timeliness and sufficiency of an appeal in Spanish. See Texas Workers' Compensation Commission Appeal No. 031150, decided June 18, 2003, and decisions cited therein.

We do not consider on appeal the two photographs that the claimant sent with his appeal because those pictures were not made a part of the CCH record and have not been shown to constitute newly discovered evidence. See Section 410.203 and Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983).

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the issue of whether the claimant sustained a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge